

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).19246/2008

(From the judgement and order dated 16/06/2008 in
& CA No. 3135/2008 of The HIGH COURT OF BOMBAY)

FA No. 781/2008

JYOTSNA PARSOTTAM MEHTA & ORS.

Petitioner(s)

VERSUS

SUDHIRKUMAR BHAIIDAS

Respondent(s)

(With appln(s) for permission to place addl. documents on record and
prayer for interim relief and office report)

Date: 20/08/2010

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s)

Ms. Nilofar Qureshi, Adv.
Ms. Rukhsana Choudhury, Adv.

For Respondent(s)

Mr. P.P. Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted. The appeal is disposed of in
terms of the signed order.

(Ganga Thakur)
PS to Registrar

(Juginder Kaur)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6850 OF 2010
(Arising out of SLP(C) No.19246/08)

JYOTSNA PARSOTTAM MEHTA & ORS.

Appellant (s)

VERSUS

SUDHIRKUMAR BHAIIDAS

Respondent(s)

O R D E R

Leave granted.

This appeal is directed against the judgment and order dated 16th June, 2008, passed by the Bombay High Court, in Civil Application No. 3135 of 2008, arising out of First Appeal No.781 of 2008 for condonation of four years' delay in filing the First Appeal against the order of the Trial Court alleged to have been passed ex-parte on 11th March, 2004. As will appear from the said impugned order, the matter was confined to the extent of delay in filing the First Appeal against the decree passed in the suit.

Apart from the above, another appeal from order No. ST 13741/08, is also pending before the High Court with regard to the rejection of the application filed by the appellant under Order 9 Rule 13 C.P.C. for setting aside the decree dated 11th March, 2004, said to have been passed ex-parte. In fact, there are two separate appeals, one against the decree passed in the suit and the other rejecting the appellant's application under Order 9 Rule 13 C.P.C.

-2-

As far as the present appeal is concerned, we are not convinced with the manner in which the application for condonation of delay was dismissed on account of the period from 11.3.04 to 13.12.04, which according to the High Court, was not explained. In our view, the entire period ought to have been taken into consideration as a whole, together with the fact that a separate appeal challenging order dated 14.2.2008 rejecting the appellants' application under Order 9 Rule 13 was pending hearing and disposal. We are accordingly inclined to allow the appeal.

At the same time, we must also indicate that the pending appeal from order, though arising out of a separate order is to a large extent connected with the

First Appeal against the decree itself.

We, therefore, dispose of the appeal by setting aside the order dated 16th June, 2008, passed in the First Appeal and direct that the said appeal, along with the appeal from orders, referred to hereinabove, arising from the rejection of appeals and the application under Order 9 Rule 13 C.P.C., be taken up together and be disposed of simultaneously by the High Court. We may also observe that the appeal for eviction is pending since 2000, and unless the same is disposed of early, the very purpose of the suit will be frustrated.

-3-

Accordingly, we request the High Court to dispose of the same as expeditiously as possible, preferably within six months from the date of communication of this order. We also make it clear that any observation made in this order should not in any way influence the outcome of the pending appeals.

.....J.
(ALTAMAS KABIR)

.....J.
(A.K. PATNAIK)

New Delhi,
August 20, 2010.